

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JS-5

## CIVIL MINUTES – GENERAL

Case No. 5:24-cv-00198 AB (AJR) Date: May 3, 2024Title Norvell Andrew v. Warden Jacob DoererPresent: The Honorable: André Birotte Jr., United States District Court JudgeCarla Badirian  
Deputy ClerkN/A  
Court Reporter / RecorderAttorneys Present for Petitioner:  
N/AAttorneys Present for Respondent:  
N/A**Proceedings (In Chambers): Motion for Reconsideration (Dkt. No. 9)**

On January 29, 2024, Petitioner filed a Petition for Habeas Corpus by a Person in Federal Custody. (Dkt. No. 1.) On January 30, 2024, the Court notified Petitioner that he had not paid the filing fee of \$5 or filed a Request to Proceed In Forma Pauperis (“IFP Request”), and gave him 30 days to do so. (Dkt. No. 2.) On March 12, 2024, when Petitioner had not done so, the Court dismissed the case without prejudice. (Dkt. No. 8.)

Now pending is Petitioner’s Motion for Reconsideration, filed on March 22, 2024. (Dkt. No. 9.) Petitioner alleges that he asked the Court for an IFP Request form on February 18, 2024, and that he is housed in a unit where the trust fund staff do not visit. (*Id.* at 1.) He requests reopening and an IFP Request form. (*Id.* at 2.)

Petitioner’s Motion is construed as a motion under Federal Rule of Civil Procedure 60(b). As relevant here, Rule 60(b)(1) permits relief from a final judgment or order for “mistake, inadvertence, surprise, or excusable neglect.”

Excusable neglect “encompass[es] situations in which the failure to comply with a filing deadline is attributable to negligence.” *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd.*, 507 U.S. 380, 394 (1993). It includes “omissions caused by carelessness.” *Id.* at 388. “To determine when neglect is excusable, we conduct the equitable analysis specified in *Pioneer* by examining at least four factors: (1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for the

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delay; and (4) whether the movant acted in good faith.” *Lemoge v. United States*, 587 F.3d 1188, 1192 (9th Cir. 2009) (citation and internal quotation marks omitted).

Here, the factors weigh in favor of relief under Rule 60(b)(1). The danger of prejudice to Respondent is low. The length of the delay is minimal. Nothing suggests that Petitioner did not act in good faith. While the reason for the delay might be attributable to Petitioner’s carelessness, this factor alone does not preclude relief. Relief has been held to be warranted in similar circumstances. *See Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1262 (9th Cir. 2010) (finding relief under Rule 60(b)(1) was warranted even though counsel’s failure to meet a deadline due to a calendaring mistake was a “weak justification”); *Lemoge*, 587 F.3d at 1197 (same even though counsel’s inability to identify the correct agency to serve may have been “seriously” negligent); *Pincay v. Andrews*, 389 F.3d 853, 859 (9th Cir. 2004) (*en banc*) (same even though counsel failure to read the applicable rule was “one of the least compelling excuses that can be offered”); *Bateman v. U.S. Postal Service*, 231 F.3d 1220, 1225 (9th Cir. 2000) (same even though counsel left the country for three weeks without requesting an extension of time).

In sum, Petitioner’s Motion for Reconsideration is granted, and the case is reopened. The Clerk of the Court will send Petitioner the blank IFP Request form accompanying this order. Petitioner is advised that he needs to complete only Pages 6 and 7 of the form, and that he must return it to the Court within 30 days of the date of this order.

**Initials of Preparer**

:

NAME

PRISON IDENTIFICATION/BOOKING NO.

ADDRESS OR PLACE OF CONFINEMENT

Note: If represented by an attorney, provide name, address, & telephone number. *It is your responsibility to notify the Clerk of Court in writing of any change of address.*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

FULL NAME (Include name under which you were convicted)

Petitioner,

v.

NAME OF WARDEN, (or other authorized person having custody of petitioner)

Respondent.

CASE NUMBER:

CV

To be supplied by the Clerk of the United States District Court

CR

Criminal case under which sentence was imposed.

**PETITION FOR WRIT OF HABEAS CORPUS BY  
A PERSON IN FEDERAL CUSTODY  
(28 U.S.C. § 2241)**

**INSTRUCTIONS - READ CAREFULLY**

This petition shall be legibly handwritten or typewritten and signed by the petitioner under penalty of perjury. You must set forth **CONCISELY** the answer to each question in the proper space on the form. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury.

You must not attach separate pages to this petition except that ONE separate additional page is permitted in answering Question No. 9.

Upon receipt of a fee of \$5.00, your petition will be filed if it is in proper order.

If you are seeking leave to proceed *in forma pauperis* (without paying the \$5.00 filing fee and other court costs), then you must also execute the declaration on the last page, setting forth information that establishes your inability to pay the fees and costs of the proceedings or to give security therefor. If you wish to proceed *in forma pauperis*, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution. If your prison account exceeds \$25.00, you must pay the filing fee as required by the rule of the district court.

When the petition is completed, the original and 3 copies must be mailed to the Clerk of the United States District Court for the Central District of California, Edward R. Roybal Federal Building & U.S. Courthouse, 255 East Temple Street, Suite TS-134, Los Angeles, California 90012, ATTENTION: Intake/Docket Section.

Only one sentence, conviction, or parole matter may be challenged in a single petition. If you challenge more than one, you must do so by separate petitions.

PLEASE COMPLETE THE FOLLOWING: (*Check appropriate number*)

This petition concerns:

1. ☐ a conviction.
2. ☐ a sentence.
3. ☐ jail or prison conditions.
4. ☐ prison discipline.
5. ☐ a parole problem.
6. ☐ other.

### PETITION

1. Place of detention \_\_\_\_\_
2. Name and location of court that imposed sentence \_\_\_\_\_  
\_\_\_\_\_
3. The indictment number or numbers (if known) upon which, and the offense or offenses for which, sentence was imposed:
  - a. \_\_\_\_\_
  - b. \_\_\_\_\_
  - c. \_\_\_\_\_
4. The date upon which sentence was imposed and the terms of the sentence:
  - a. \_\_\_\_\_
  - b. \_\_\_\_\_
  - c. \_\_\_\_\_
5. Check whether a finding of guilty was made:
  - a. ☐ After a plea of guilty
  - b. ☐ After a plea of not guilty
  - c. ☐ After a plea of nolo contendere
6. If you were found guilty after a plea of not guilty, check whether that finding was made by:
  - a. ☐ a jury
  - b. ☐ a judge without a jury
7. Did you appeal from the judgment of conviction or the imposition of sentence? ☐ Yes ☐ No
8. If you did appeal, give the following information for each appeal:

**CAUTION:** *If you are attacking a sentence imposed under a federal judgment, you must first file a direct appeal or motion under 28 U.S.C. § 2255 in the federal court that entered the judgment.*

- a. (1) Name of court \_\_\_\_\_
- (2) Result \_\_\_\_\_
- (3) Date of result \_\_\_\_\_
- (4) Citation or number of opinion \_\_\_\_\_

(5) Grounds raised (*list each*):

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
- (d) \_\_\_\_\_

b. (1) Name of court \_\_\_\_\_

(2) Result \_\_\_\_\_

(3) Date of result \_\_\_\_\_

(4) Citation or number of opinion \_\_\_\_\_

(5) Grounds raised (*list each*):

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
- (d) \_\_\_\_\_

9. State **CONCISELY** every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, attach a **SINGLE** page only behind this page.

**CAUTION:** *If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date. You must state facts, not conclusions, in support of your grounds. A rule of thumb to follow: state WHO did exactly WHAT to violate your rights at WHAT time and place.*

a. Ground one: \_\_\_\_\_

Supporting FACTS (tell your story BRIEFLY without citing cases or law): \_\_\_\_\_

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b. Ground two: \_\_\_\_\_

Supporting FACTS (tell your story BRIEFLY without citing cases or law): \_\_\_\_\_

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c. Ground three: \_\_\_\_\_

Supporting FACTS (tell your story BRIEFLY without citing cases or law): \_\_\_\_\_

d. Ground four: \_\_\_\_\_

Supporting FACTS (tell your story BRIEFLY without citing cases or law): \_\_\_\_\_

10. Have you filed previous petitions for habeas corpus, motions under Section 2255 of Title 28, United States Code, or any other applications, petitions, or motions with respect to this conviction? ☐ Yes ☐ No

11. If your answer to Question No. 10 was yes, give the following information:

a. (1) Name of Court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

(4) Result \_\_\_\_\_

(5) Date of result \_\_\_\_\_

(6) Citation or number of any written opinions or orders entered pursuant to each disposition.

- b. (1) Name of Court \_\_\_\_\_
- (2) Nature of proceeding \_\_\_\_\_
- (3) Grounds raised \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- (4) Result \_\_\_\_\_
- (5) Date of result \_\_\_\_\_
- (6) Citation or number of any written opinions or orders entered pursuant to each disposition.
- \_\_\_\_\_
- \_\_\_\_\_

12. If you did not file a motion under Section 2255 of Title 28, United States Code, or if you filed such a motion and it was denied, state why your remedy by way of such motion is inadequate or ineffective to test the legality of your detention:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

13. Are you presently represented by counsel? ☐ Yes ☐ No

If so, provide name, address, and telephone number \_\_\_\_\_

\_\_\_\_\_

Case name and court \_\_\_\_\_

\_\_\_\_\_

14. If you are seeking leave to proceed *in forma pauperis*, have you completed the declaration setting forth the required information? ☐ Yes ☐ No

WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding,

\_\_\_\_\_  
*Signature of Attorney (if any)*

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_

*Date*

\_\_\_\_\_  
*Signature of Petitioner*

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*Petitioner*

**DECLARATION IN SUPPORT  
OF REQUEST  
TO PROCEED  
IN FORMA PAUPERIS**

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*Respondent(s)*

I, \_\_\_\_\_, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? ☐ Yes ☐ No

a. If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer. \_\_\_\_\_

b. If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received. \_\_\_\_\_

2. Have you received, within the past twelve months, any money from any of the following sources?

a. Business, profession or form of self-employment? ☐ Yes ☐ No

b. Rent payments, interest or dividends? ☐ Yes ☐ No

c. Pensions, annuities or life insurance payments? ☐ Yes ☐ No

d. Gifts or inheritances? ☐ Yes ☐ No

e. Any other sources? ☐ Yes ☐ No

If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past twelve months: \_\_\_\_\_

3. Do you own any cash, or do you have money in a checking or savings account? (*Include any funds in prison accounts*) ☐ Yes ☐ No

If the answer is yes, state the total value of the items owned: \_\_\_\_\_

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property? (*Excluding ordinary household furnishings and clothing*) ☐ Yes ☐ No

If the answer is yes, describe the property and state its approximate value: \_\_\_\_\_



5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support: \_\_\_\_\_

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Signature of Petitioner*

### **CERTIFICATE**

I hereby certify that the Petitioner herein has the sum of \$\_\_\_\_\_ on account to his credit at the \_\_\_\_\_ institution where he is confined. I further certify that Petitioner likewise has the following securities to his credit according to the records of said institution:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Authorized Officer of Institution*

\_\_\_\_\_  
*Title of Officer*